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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

ZENOBIA COX,

Plaintiff and Appellant,

v.

AMERICAN AIRLINES,

Defendant and Respondent.

B291634

(Los Angeles County Super. Ct.
No. BC646990)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mel Red Recana, Judge. Affirmed.

Zenobia Cox, in pro. per., for Plaintiff and Appellant.

Worthe Hanson & Worthe, Todd C. Worthe, and Mackenzie Cass Foellmer for Defendant and Respondent.

Zenobia Cox arrived for her flight too late, so American Airlines (American) did not let her board it. Cox sued American, which moved for summary judgment. In opposition, Cox changed her story to include new allegations of assault, battery, and false imprisonment. The trial court granted summary judgment. We affirm.

I

Cox booked American to travel from Louisiana to California with a layover in Texas. Her first flight, from Louisiana to Texas, was delayed. That made it impossible for Cox to get to her second flight, from Texas to California, before its scheduled departure time.

According to American, Cox arrived at the gate for her second flight around 15 minutes after its scheduled departure. The plane's door was closed. An American employee told Cox that she could not board the flight. Cox disputes none of this.

Cox sued American for "General Negligence" and "Intentional Tort." For both causes of action, Cox pleaded three identical paragraphs. In the first two paragraphs, Cox described how she missed her flight and alleged an American employee told "me that the plane was about to leave so I told her I was going to take a picture with the date and time showing that they were in the wrong. I also tape[d] the [conversation] between myself and the staff." (original underscoring.) Cox added American employees became "*very upset and rude*," and one "commented that she always had problems with black girls." (original italics.)

The third and final paragraph of Cox's complaint alleged:

"(a) Employees of American Airlines refused to allow me to board a booked flight while I was at the entrance to

the boarding gate and the plane was still parked at the gate;

“(b) Employees of American Airlines blocked me from booking an alternative flight on the American Airlines reservation system;

“(c) Employees of American Airlines demanded that I turn over my camera to them before I am allowed to travel on American Airlines; and

“(d) Employees of American Airlines deleted photos and a video of the incident after being told of my belief that I was being discriminated against because of my race.”

American moved for summary judgment. It argued its Tariffs and Conditions of Carriage barred Cox’s recovery for her delayed flight, her missed connection, and her inability to book another flight immediately. American incorporated these Conditions into Cox’s ticket, as allowed by federal regulations. (See 14 C.F.R. §§ 253.1, 253.2, 253.4 (2019).) American also argued Cox alleged no negligent conduct.

American’s Conditions limit its liability for failing to make connecting flights, require passengers to arrive at a gate 15 minutes before a flight’s scheduled departure, and allow American to refuse transportation to anyone who fails to provide identification or is disorderly. American’s separate statement of material facts cited evidence Cox did not arrive at her second flight more than 15 minutes before its scheduled departure. American also cited evidence Cox failed to provide identification.

Cox missed her deadline for opposing American’s motion. When she did file her tardy opposition, she did not dispute that American’s Conditions were contractually binding. Instead, she argued the Conditions were irrelevant because a party cannot

contract away liability for assault, battery, and false imprisonment — torts Cox now alleged, for the first time, in her opposition motion.

Cox supported her new allegations with her declaration. It said an American employee “attempted to take [Cox’s] phone from her by force, which cause[d] the phone to slip and hit [her] tooth causing a chip in [her] tooth.” The declaration said the same employee “grabbed [Cox’s] bag which was on her shoulder — he was attempting to walk away and he attempted to stop her by force.”

In addition to these new facts, Cox’s opposition argued her complaint “include[s] claims for negligence and intentional torts, which includes non-economic damages. Therefore, Plaintiff’s negligence claim should not be barred either.”

Cox’s “Separate Statement Re Disputed Facts” responded to just five of the 38 facts in American’s statement of material facts. It contained no references to supporting evidence.

The trial court granted summary judgment. It ruled Cox’s declaration was inadmissible because it was not signed under penalty of perjury. And it ruled Cox’s failure to file a statement of material facts that complied with Civil Procedure Code section 437c, subdivision (b)(3), was sufficient grounds to reject Cox’s opposition. The trial court also gave additional grounds for rejecting Cox’s opposition: new allegations of assault, battery, and false imprisonment could not defeat American’s motion because Cox did not plead those allegations; and evidence contradicted the unsupported assertions Cox made in her separate statement of material facts.

II

Summary judgment must be granted if a party shows there exists no triable issue of material fact and the party is entitled to judgment as a matter of law. (Code Civ. Proc., §437c, subd. (c).) Our review is independent. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 860.)

Cox is self-represented but she must follow the same procedural rules as a represented party. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984–985.) If self-represented parties could flout procedural rules, it would be unfair to represented parties. (*Ibid.*)

American carried its burden by showing the contract precluded liability for Cox’s delayed flight, missed connection, and inability to book immediately another flight.

On appeal, Cox’s sole argument that the Conditions are not contractually binding is a single sentence: “Plaintiff has not been given reasonable notice of the contents of the conditions of carriage.” Even if this argument were supported by citations to law and the record, and it is not, Cox forfeited the argument by failing to raise it at the trial court. (*DiCola v. White Bros. Performance Prod., Inc.* (2008) 158 Cal.App.4th 666, 676.)

Most of Cox’s briefing focuses on her new allegations of assault, battery, and false imprisonment. New allegations cannot save her suit. The tactic of changing one’s story to avoid summary judgment is improper. (*Cohen v. Kabbalah Centre Internat., Inc.* (2019) 35 Cal.App.5th 13, 18.) Cox says her “response to defendant’s motion for summary judgment in essence served as an amended complaint [] as it gave notice to defendant of the causes of actions and factual claims.” (original underscoring.) But using a summary judgment opposition as a

substitute for amended pleadings is the very gambit courts reject. (See, e.g., *County of Santa Clara v. Atlantic Richfield Co.* (2006) 137 Cal.App.4th 292, 323–333.) Permitting this tactic would destroy the utility of summary judgment.

Cox’s other arguments fail too. She misunderstands the trial court when she claims it erred by ruling her “failure to file a two column format [for her statement of material facts] is ‘sufficient grounds for granting defendant’s motion.’” The problem with Cox’s statement of material facts was not a missing two column format, but rather that it did not respond to the brunt of American’s asserted facts. (See Code Civ. Proc., § 437c, subd. (b)(3).) For the few facts Cox did dispute, she failed to cite evidence.

Statements of material facts are not mere technicalities. (*Kojababian v. Genuine Home Loans, Inc.* (2009) 174 Cal.App.4th 408, 415–416.) They are an indispensable part of summary adjudication; they allow courts to assess which facts, if any, are disputed and what evidence supports those facts. (*Ibid.*) Cox complains American listed many facts twice, but it does not appear she raised this issue at the trial court. The rules for statements of material facts applied to Cox even though she was self-represented. (See *Rappleyea v. Campbell, supra*, 8 Cal.4th at pp. 984–985.)

Cox’s failure to marshal admissible evidence doomed her opposition to American’s motion. The trial court properly ruled Cox’s declaration was inadmissible. The declaration was defective. It was not made under penalty of perjury. It did not identify the state in which it was executed. (Code Civ. Proc., § 2015.5.) Because Cox’s declaration is inadmissible, and Cox cited no other evidence, nothing supports her claims that she was not

aggressive or disorderly and that she did not refuse to tell American employees her name.

Cox contends “Plaintiff’s claims include claims for negligence and intentional torts, which includes non-economic damages. Therefore, Plaintiff’s negligence claim should not be barred either.” The nature of a cause of action is determined from the allegations, not the title of the pleadings or the sort of damages sought. (*McDonald v. Filice* (1967) 252 Cal.App.2d 613, 622.) Cox alleged conduct that was intentional and not negligent. (See Civ. Code, § 1714.)

Cox says the trial court’s summary judgment violated her Seventh Amendment right to trial by jury. Not so. The Seventh Amendment right to a civil jury does not apply to states. (*Gonzalez-Oyarzun v. Caribbean City Builders, Inc.* (1st Cir. 2015) 798 F.3d 26, 29 [detailing the United State Supreme Court’s consistent holding states are not bound by the Seventh Amendment’s civil jury requirement].) Even if it did, the Seventh Amendment permits summary adjudication. (*Harris v. Interstate Brands Corp.* (8th Cir. 2003) 348 F.3d 761, 762.)

DISPOSITION

The judgment is affirmed. Costs to American.

WILEY, J.

WE CONCUR:

BIGELOW, P. J.

STRATTON, J.